

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON, D.C. 20579

IN THE MATTER OF THE CLAIM OF

IRVING METRICK

Claim No. **CU** - 0546

Decision No. **CU** - 1499

Under the International Claims Settlement
Act of 1949, as amended

Counsel for claimant:

Sidney E. Rubenstein, Esquire

AMENDED PROPOSED DECISION

By Proposed Decision issued April 10, 1968 the Commission denied this claim for failure of proof. The decision became final on May 21, 1968. Additional evidence having been discovered the matter has been reconsidered. Accordingly, the Final Decision is set aside and the Proposed Decision is herein amended.

In our decision entitled the Claim of Abraham Shaffir, (Claim No. CU-2329 which we incorporate herein by reference), we held that the properties owned by Encaje Cubano, S.A., were nationalized or otherwise taken by the Government of Cuba on December 5, 1962, and that this type of claim is compensable to an American national under the facts and conditions set forth therein. We need not again detail here the reasons or the method used in determining the value per share of Encaje as \$101.4474.


On the basis of evidence in the record in the instant case, the Commission now finds that this claimant comes within the terms of the Shaffir decision; that he was an American national at the requisite times; that he has been the owner of 67 shares of stock in Encaje Cubano, S.A., since prior to December 5, 1962; and that he suffered a loss in the amount of \$6,796.98 within the meaning of Title V of the Act. Further, the Commission finds that the amount of loss sustained shall be increased by interest thereon at the rate of 6% per annum from December 5, 1962, the date of loss, to the date on which provisions are made for the settlement thereof. (See Shaffir, supra.)

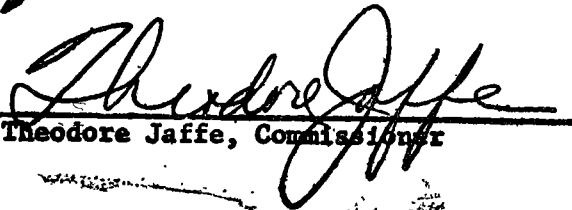
CERTIFICATION OF LOSS

The Commission certifies that IRVING METRICK suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Six Thousand Seven Hundred Ninety-six Dollars and Ninety-eight Cents (\$6,796.98) with interest at 6% per annum from December 5, 1962 to the date of settlement.

Dated at Washington, D. C., and entered as the Amended Proposed Decision of the Commission

9 SEP 1970


Lyle S. Garlock, Chairman


Theodore Jaffe, Commissioner

NOTICE TO TREASURY: The above-referenced securities may not have been submitted to the Commission or if submitted, may have been returned; accordingly, no payment should be made until claimant establishes retention of the securities or the loss here certified.

The statute does not provide for the payment of claims against the Government of Cuba. Provision is only made for the determination by the Commission of the validity and amounts of such claims. Section 501 of the statute specifically precludes any authorization for appropriations for payment of these claims. The Commission is required to certify its findings to the Secretary of State for possible use in future negotiations with the Government of Cuba.

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receipt of notice of this Amended Proposed Decision, the decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. §531.5(e) and (g), as amended, 32 Fed. Reg. 412-13 [1967].)

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Counsel for claimant:

Sidney E. Rubenstein, Esq.

PROPOSED DECISION

This claim against the Government of Cuba, filed under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$17,666.66, was presented by IRVING METRICK, and is based upon the asserted loss of a stock ownership interest in Encaje Cubano, S.A., a Cuban company. Claimant has been a national of the United States since his naturalization on May 12, 1914.

Under Title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964), 22 U.S.C. §§1643-1643k (1964), as amended, 79 Stat. 988 (1965)], the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. Section 503(a) of the Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Government of Cuba arising since January 1, 1959 for

losses resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against, property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States.

Section 502(3) of the Act provides:

The term 'property' means any property, right, or interest including any leasehold interest, and debts owed by the Government of Cuba or by enterprises which have been nationalized, expropriated, intervened, or taken by the Government of Cuba and debts which are a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

Section 504 of the Act provides, as to ownership of claims, that

(a) A claim shall not be considered under section 503(a) of this title unless the property on which the claim was based was owned wholly or partially, directly or indirectly by a national of the United States on the date of the loss and if considered shall be considered only to the extent the claim has been held by one or more nationals of the United States continuously thereafter until the date of filing with the Commission.

The Regulations of the Commission provide:

The claimant shall be the moving party and shall have the burden of proof on all issues involved in the determination of his claim. (FCSC Reg., 45 C.F.R. §531.6(d) (Supp. 1967).)

Claimant has failed to submit sufficient evidence of probative value to substantiate his ownership interest in the Cuban company, Encaje Cubano, S.A. By Commission letter of July 20, 1966, claimant was advised, through counsel, as to the type of evidence proper for submission to establish this claim under the Act. Thereafter, by letter of November 23, 1966, the Commission made additional suggestions to claimant, through counsel, concerning the submission of supporting evidence in this matter.

On December 13, 1966, claimant, through counsel, submitted some evidence to the Commission in response to its letters. At that time the claimant indicated that the original stock certificates evidencing his ownership in Encaje Cubano, S.A., were turned over to an agency of the United States Government for safekeeping in November or December 1960. Claimant further asserts that no receipt was given. In support of his statement of ownership, claimant submitted an affidavit from the former secretary of the Cuban company who certified that claimant owned 67 shares in the company.

On the basis of claimant's assertions that the original stock certificates were deposited with the said agency of the United States Government the Commission conducted an independent search in an attempt to locate the certificates. However, no records regarding a deposit of subject certificates have been discovered, and no further evidence has been submitted in support of the claim.

The Commission finds that claimant has not met the burden of proof in that he has failed to establish ownership of rights and interests in property which was nationalized, expropriated or otherwise taken by the Government of Cuba. Accordingly, this claim is hereby denied. The Commission deems it unnecessary to make determinations with respect to other elements of the claim.

Dated at Washington, D. C.,
and entered as the Proposed
Decision of the Commission

APR 10 1968

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receipt of notice of this Proposed Decision, the decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. 531.5(e) and (g) as amended, 32 Fed. Reg. 412-13 (1967).)

CU-0546